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8  
9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 JGSM ENTERTAINMENT CORP., a  
Delaware corporation,

12 Plaintiff,

13 vs.

14 TWG MANAGEMENT, LLC, a Nevada  
15 limited liability company; TOM  
16 WACKMAN, an individual resident of  
Wisconsin.

17 Defendants.

Case No. 2:17-cv-02915-KJD-NJK

**RESPONSE IN OPPOSITION TO  
PLAINTIFF'S MOTION TO LIFT  
STAY [ECF No. 50]**

18  
19 Defendants TWG Management, LLC and Tom Wackman  
20 (collectively, "TWG Defendants") file their Response in opposition to Plaintiff  
21 JGSM Entertainment Corporation's ("JGSM's") Motion to Lift Stay, (ECF No. 50)  
22 ("Motion"). JGSM's Motion is premature because arbitration proceedings remain  
23 ongoing. Moreover, the Court, if inclined, can dismiss this case upon its own  
24 volition to conserve judicial resources rather than resolving JGSM's attempt to lift

1 the stay and enter default against TWG Defendants.

## 2 **I. INTRODUCTION**

3 JGSM's Motion to Lift Stay is premature because arbitration  
4 proceedings are ongoing. Until the assigned arbitrator issues a decision that  
5 definitely ends those proceedings, this federal litigation should not resume.

6 Moreover, all of JGSM's claims are subject to binding arbitration.  
7 Because the parties have consented to arbitration, and because that arbitration  
8 remains ongoing, this federal litigation is unnecessarily duplicative. In fact, even if  
9 TWG Defendants did not further participate in the arbitration, that would not end  
10 arbitration proceedings—as the arbitration rules provide that the assigned panel  
11 can still hear JGSM's evidence on its claims then make a ruling on the merits  
12 regardless of the other party's participation. And since all claims in this federal  
13 action are subject to adjudication in ongoing arbitration, the Court can dismiss this  
14 action rather than have it needlessly drain judicial resources.

15 Dismissal would not cause any prejudice to the parties. JGSM—as  
16 the party who both filed this case and later moved to compel it to arbitration—will  
17 be able to file a separate lawsuit upon conclusion of arbitration to enforce any  
18 award, decision, or order on the same claims and issues raised in this matter. So  
19 the Court should deny JGSM's Motion and dismiss this case upon the Court's own  
20 volition.

## 21 **II. PROCEDURAL AND FACTUAL BACKGROUND**

22 JGSM initiated this case in the Eighth Judicial District Court for Clark  
23 County, Nevada, on October 6, 2017, and TWG Defendants removed it to Federal  
24 Court on November 20, 2017. (Pet. Removal, ECF No. 1). Roughly one month

1 after removal, JGSM moved to compel arbitration of all its claims despite being  
2 the one who filed the case. (Mot. Compel Arbitration, ECF No. 11) (arguing that  
3 all claims in this case arise from an “Operating Agreement” signed by JGSM and  
4 TWG Defendants, and citing a binding provision in the Operating Agreement that  
5 required arbitration of all claims). The Court granted JGSM’s request, compelled  
6 arbitration, and stayed this case pending resolution of proceedings before the  
7 American Arbitration Association (the “AAA”). (Order, ECF No. 40) (entered on  
8 September 24, 2018).

9 As arbitration proceeded, issues arose about TWG Defendants’ lack of  
10 representation by counsel as well as outstanding fees owed to the AAA. Rather  
11 than settle these issues solely in arbitration, JGSM attempted to restart this federal  
12 case by filing a Motion for Entry of Clerk’s Default on August 5, 2020, (ECF No.  
13 47). The Court denied that request for default—finding it premature due to the  
14 ongoing arbitration proceedings; thus, this federal lawsuit remained stayed. (Order,  
15 ECF No. 48). Nevertheless, not even four months after the Court’s Order denying  
16 default, JGSM moved again for entry of default against TWG Defendants as well  
17 as lifting of the stay. (Motion to Lift Stay and Entry of Default, ECF No. 50).<sup>1</sup>

18 Currently, arbitration proceedings between the parties are stayed  
19 “[b]ecause full payments have not been received.” **Ex. 1**, Order Suspending  
20 Arbitration Proceedings for Sixty Days. The presiding arbitration panel provided a

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21 <sup>1</sup> Because JGSM filed the request for default and lifting of the stay in a single  
22 Motion, the Clerk of Court ordered refile of the request for default as a stand-  
23 alone document. (Min. Order, ECF No. 51). The docket therefore reflects two  
24 currently pending Motions before the Court: a Motion to Lift Stay, (ECF No. 50);  
and a Motion for Entry of Clerk’s Default, (ECF No. 52).

1 deadline of May 3, 2021, to “permit the parties to make the full deposits  
 2 requested.” *Id.* The arbitration panel noted that “[i]f the parties fail to make the  
 3 full deposits requested on or by May 3, 2021, the Panel *may* terminate this  
 4 [arbitration] proceeding.” *Id.* (emphasis added).

### 5 **III. ARGUMENT**

#### 6 **A. JGSM’s Motion to Lift the Stay Is Premature Because** 7 **Arbitration Proceedings Have Not Ended and JGSM Has Not** 8 **Secured a Finding of Default Through Arbitration Procedures.**

9 JGSM’s Motion is premature because arbitration proceedings are still  
 10 ongoing between the parties. JGSM’s cited case law lends support for the  
 11 premature nature of its Motion, as does the Court’s prior Order resolving JGSM’s  
 12 first request for entry of default.

13 Generally, lifting a court-imposed stay is appropriate only when  
 14 arbitration has clearly been terminated by the assigned arbitrator or default has  
 15 been secured against a delaying party through the applicable arbitration process.  
 16 *Sink v. Aden Enterprises, Inc.*, 352 F.3d 1197, 1199 (9th Cir. 2003) (“Citing [a  
 17 party’s] non-payment, the arbitrator on August 23, 2001, entered an Order finding  
 18 [that party] to be in default in the arbitration proceeding. It was not clearly  
 19 erroneous for the district court to find, in confirmation, that [the party] had  
 20 defaulted in arbitration.”); *Pre-Paid Legal Servs., Inc. v. Cahill*, 786 F.3d 1287,  
 21 1294 (10th Cir. 2015) (“Under the AAA rules, the panel terminated the  
 22 proceedings.”); *Roach v. BM Motoring, LLC*, 155 A.3d 985, 995 (N.J. 2017)  
 23 (“[D]efendants failed to advance filing fees after [claimant] filed her arbitration  
 24 claim with the AAA and failed to otherwise engage in arbitration after the AAA

1 refused to arbitrate [a] claim due to defendants’ prior actions.”).<sup>2</sup> In such  
 2 circumstances, lifting a court-imposed stay becomes appropriate because  
 3 arbitration demonstrably cannot provide a forum for a party to seek adequate relief.  
 4 *See Sink*, 352 F.3d at 1201 (explaining that the purpose of arbitration (expeditious  
 5 resolution of claims) would not be served “by requiring a district court to enter an  
 6 order returning parties to arbitration upon the motion of a party that is already in  
 7 default of arbitration.”). Courts therefore wait to lift a stay until there is a  
 8 conclusive end to arbitration because doing so both honors the parties’ contractual  
 9 agreement to arbitrate while ensuring that court intervention occurs only when  
 10 unquestionably appropriate. *See Juiceme, LLC v. Booster Juice Ltd. P’ship*, 730 F.  
 11 Supp. 2d 1276, 1285 (D. Or. 2010) (staying proceedings because, “[i]n the present  
 12 matter, Plaintiffs did not move for an order of default in arbitration nor did an  
 13 arbitrator have any opportunity to make any finding of default.”).

14 And, notably, courts look to the arbitration rules or decisions as the

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15 <sup>2</sup> JGSM cites to *Brown v. Dillard’s, Inc.*, 430 F.3d 1004, 1006 (9th Cir. 2005), and  
 16 *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 650 (9th Cir. 1991), in support of  
 17 its argument that refusal to participate in arbitration warrants resuming court  
 18 proceedings. (Mot. Lift Stay 6:14–23, ECF No. 50). But these cases revolved  
 19 around entirely different circumstances than this case, rendering them wholly  
 20 inapplicable here. *Brown* did not involve lifting a stay pending arbitration; it  
 21 involved a party seeking to file a lawsuit after the defendant, Dillard’s, refused to  
 22 participate in earlier arbitration proceedings. The court permitted the case to  
 23 proceed in court after citing specific facts that clearly showed how Dillard’s  
 24 “refused to participate in the arbitration process at all.” *Brown*, 430 F.3d at 1010.  
 And in *Morris*, it was the plaintiffs who brought claims in court, followed by the  
 defendant successfully moving to compel arbitration. Yet, when in arbitration, the  
 plaintiffs refused to participate for years, prejudicing the diligent defendant by  
 continuing to have that party face active claims without fair resolution. *Morris*, 942  
 F.2d at 652 (“[I]t is the responsibility of the [party pursuing claims] to move  
 towards that disposition at a reasonable pace, and to refrain from dilatory and  
 evasive tactics.”). Our case has none of these critical facts that warranted court  
 litigation rather than arbitration.

1 best indicator for when arbitration proceedings have ended and court intervention  
 2 becomes necessary. *See Cahill*, 786 F.3d at 1294 (“The AAA determined the  
 3 arbitration had gone as far as it could due to Mr. Cahill’s repeated refusal to pay  
 4 the fees.”). Courts recognize how arbitration provides a set process to establish  
 5 one party’s default or decisively declare the end, and parties are commonly  
 6 required to comply with those relevant arbitration procedures before requesting  
 7 that a court lift a stay. *See id.*; *Sink*, 352 F.3d at 1201.

8 JGSM has not secured a finding of default in arbitration against TWG  
 9 Defendants, and arbitration proceedings have not ended—a critical distinction to  
 10 JGSM’s cited cases. JGSM’s own Motion recognizes the continuing nature of  
 11 arbitration between the parties. (Decl. Ismail Amin, Esq. ¶ 15, ECF No. 50-1).  
 12 Indeed, the arbitration panel’s own order has allowed TWG Defendants until May  
 13 3, 2021, to pay any outstanding fees so that arbitration on the merits of JGSM’s  
 14 claims can resume.

15 In fact, even if TWG Defendants did not pay the outstanding fees,  
 16 arbitration could still continue. The governing arbitration rules specify that a party  
 17 cannot prevail simply because another party does not appear or participate.<sup>3</sup>  
 18 Rather, the assigned arbitration panel could decide to proceed with the matter  
 19 regardless of fee payment, thereby requiring JGSM to prove its claims irrespective  
 20 of being unopposed.<sup>4</sup> (Ex. A(5) to JGSM’s Mot., Ltr. from AAA on Suspending

21 \_\_\_\_\_  
 22 <sup>3</sup> *Commercial Arbitration Rules and Mediation Procedures*, American Arbitration  
 23 Association, <https://adr.org/sites/default/files/Commercial-Rules-Web.pdf> (last  
 24 visited April 1, 2021) (R-31 provides that “An award shall not be made solely on  
 the default of a party”).

<sup>4</sup> *Id.*

Proceedings) (stating that “[i]n the event the deposits have not been received by the above referenced due date the Panel will be advised and determine how to proceed, which *may* include termination of this matter.”) (emphasis added). JGSM, therefore, still has an adequate forum through arbitration to pursue its claims on the merits. JGSM’s own exhibits lend support for this potential result. (Ex. A(4) to JGSM’s Mot., Correspondence from the Manager of ADR Services, ECF No. 50-1) (“The panel may proceed with the hearing without full deposits. As arbitrator compensation and expenses are incurred, the AAA will distribute the share of payment owed from the deposits received and will continue our efforts to collect any outstanding balance.”).

More importantly, the arbitration forum can resolve any and all issues about undue delay or default that JGSM now lobs to this Court. Specific arbitration rules govern that process.<sup>5</sup> Lifting the Court’s stay now would merely invite parallel litigation and give JGSM two chances to pursue identical relief.

The Court has already explained these procedures to JGSM when it denied JGSM’s first attempt at securing entry of default. (Order, ECF No. 48). That prior decision instructed JGSM to look to the rules governing arbitration before future requests to take action in this case, and that guidance applies now. (*Id.* 2:7–8) (“The American Arbitration Association has rules of procedure governing the arbitration and fact-finding process before it, including rules for

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<sup>5</sup> *Commercial Arbitration Rules and Mediation Procedures*, American Arbitration Association, <https://adr.org/sites/default/files/Commercial-Rules-Web.pdf> (last visited April 1, 2021) (Rules located at L-3 and R-32 provide language allowing arbitrators to control the expeditious resolution of matters through discretionary measures to avoid undue delay).



1 representation and designating counsel. Therefore, the Court finds that Plaintiff's  
2 motion is premature").

3 Altogether, there is an established procedure for JGSM to secure a  
4 conclusive end to arbitration. At this time, however, arbitration is ongoing as  
5 shown by the remaining weeks for TWG Defendants to pay all outstanding fees  
6 owed to the arbitration panel. So JGSM's request to lift the stay is premature and  
7 should be denied.

8 **B. The Court Should Dismiss This Case Without Prejudice, Rather**  
9 **Than Resolve Issues Regarding a Continued Stay of Proceedings,**  
10 **Because This Litigation Is Duplicative and An Unnecessary Drain**  
11 **on Court Resources.**

12 Aside from the Motion to Lift Stay being premature, JGSM's  
13 arguments justify dismissal of this case rather than continuation of court litigation.  
14 JGSM can pursue all appropriate relief—including findings of non-participation  
15 and failure to defend—through arbitration. There is no need for duplicative review  
16 by this Court.

17 **1. Dismissing This Case Is Warranted Instead of Lifting the Stay.**

18 The Ninth Circuit recognizes that dismissal of a court case is  
19 appropriate when all asserted claims are covered by a valid and enforceable  
20 arbitration agreement. *E.g.*, *2151 Michelson, L.P. v. Corp. of the Presiding Bishop*  
21 *of the Church of Jesus Christ of Latter-Day Saints*, 754 F. App'x 596, 597 (9th Cir.  
22 2019) ("A district court may dismiss an action, rather than stay it, when all of the  
23 issues are arbitrable.") (citing *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638  
24 (9th Cir. 1988)). By contrast, courts generally choose to stay federal litigation



1 pending arbitration when the presiding court will have some role after arbitration  
 2 proceedings end—such as where several claims are subject to arbitration but others  
 3 will remain for a court to decide; or where an interested party to the litigation  
 4 cannot participate in arbitration proceedings, warranting the court’s independent  
 5 resolution of issues. *See Int’l All. of Theatrical Stage Emps. & Moving Picture*  
 6 *Technicians, Artists, & Allied Crafts of the U.S. v. In Sync Show Prods., Inc.*, No.  
 7 2:12-cv-00181-GMN, 2012 WL 3780022, at \*2 (D. Nev. Aug. 31, 2012), *aff’d sub*  
 8 *nom. Int’l All. of Theatrical Stage Emp. & Moving Picture Technicians Artists, &*  
 9 *Allied Crafts of the United States, It’s Trusteed Loc. 720 Las Vegas, Nevada v.*  
 10 *InSync Show Prods., Inc.*, 801 F.3d 1033 (9th Cir. 2015) (staying proceedings  
 11 pending an arbitrator’s ruling on enforceability of a contract containing an  
 12 arbitration agreement).

13 Dismissal here, rather than upholding the stay and denying the  
 14 Motion, relieves the Court from needlessly having to monitor the docket, order  
 15 status reports, or manage premature disputes such as this one. Thus, dismissal  
 16 would be an appropriate result instead of resolving issues about staying this case.

17 JGSM recognized from the outset that all its claims in this federal case  
 18 are subject to the binding arbitration now in place.<sup>6</sup> (JGSM’s Mot. Compel Arb.  
 19 9:21–11:3, ECF No. 11). Arbitration provides the forum to resolve the parties’  
 20 claims and also allows JGSM to raise issues of default or undue delay. So despite  
 21 JGSM expressing its frustration with the pace of arbitration proceedings to this  
 22 Court, arbitration remains the proper forum to adjudicate all disputes between the

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23 <sup>6</sup> TWG Defendants did not assert counterclaims against JGSM in this federal  
 24 litigation; only JGSM had active claims.

1 parties until the panel dismisses it.

2 **2. JGSM's Arguments Bolster Dismissal as Appropriate Here.**

3 JGSM points to how the Court has had to monitor this case's progress  
4 by ordering status reports and a show cause order. (Mot. Lift Stay 4:3–20, 9:14–22,  
5 ECF No. 50). Dismissal would solve this issue and prevent further expense of  
6 judicial resources for such concerns, petty disputes, or future motions seeking entry  
7 of default.

8 Moreover, JGSM would not suffer prejudice should the Court decide  
9 to dismiss this action. Should it prevail in the arbitration, JGSM would be able to  
10 file a separate action to enforce any arbitration award, decision, or judgment.  
11 *Hutson v. USAA Sav. Bank*, No. 2:19-cv-01969-GMN-EJY, 2021 WL 634990, at  
12 \*2 (D. Nev. Feb. 18, 2021) (“Should Plaintiff receive relief, she may initiate an  
13 action by filing a motion to confirm the arbitration award in a court of competent  
14 jurisdiction under 9 U.S.C. § 9.”).

15 **3. Dismissal Can Occur On the Court's Own Volition.**

16 The Court can order dismissal of this case without a new round of  
17 briefing by the parties on the subject. Indeed, it can do so on its own volition. *See*  
18 *Sparling*, 864 F.2d at 638 (holding that the district court properly acted within its  
19 discretion when it dismissed claims due to a binding arbitration agreement even  
20 though neither party asked for dismissal and, instead, one party requested a stay).  
21 By TWG Defendants raising dismissal in this Response, though, JGSM will have a  
22 full opportunity to oppose it in the Reply (if JGSM elects to file one). Thus, the  
23 Court can dismiss this case at the same time it rules on JGSM's request to lift the  
24 stay, and doing so would comply with Ninth Circuit precedent requiring notice

1 about that possible result to all parties beforehand. *Id.* (“The court must give notice  
2 of its intention to dismiss and give the plaintiff some opportunity to respond unless  
3 the ‘[p]laintiffs cannot possibly win relief.’”).

4 JGSM’s Motion to Lift Stay is an attempt to renege on its enforcement  
5 of an arbitration agreement covering all claims. But since JGSM already elected to  
6 enforce that agreement, and since ongoing arbitration proceedings can provide  
7 adequate relief on the merits of claims, this Court can conserve its own resources  
8 by dismissing this duplicative action without prejudice. *Hendrickson v. USAA Sav.*  
9 *Bank*, No. 2:19-cv-02140-GMN-NJK, 2020 WL 1815826, at \*1 (D. Nev. Apr. 8,  
10 2020) (“Here, because all of Plaintiff’s claims are subject to the arbitration  
11 agreement, and because the claims have already been submitted to arbitration and  
12 are pending completion, the Court finds that dismissal without prejudice is  
13 appropriate.”). As courts in this District routinely recognize under similar  
14 circumstances, dismissal allows the presiding Judge to attend to more pressing  
15 matters on the already busy docket rather than entertaining duplicative litigation  
16 and inconsequential disputes between parties. *See, e.g., id.; Echevarria-Hernandez*  
17 *v. Affinitylifestyles.com, Inc.*, No. 2:16-cv-00943-GMN-VCF, 2017 WL 1160571,  
18 at \*5 (D. Nev. Mar. 27, 2017) (“[T]he Court finds that dismissal is warranted  
19 because all of Plaintiff’s claims are subject to the arbitration policy.”).

#### 20 **IV. CONCLUSION**

21 The Court should deny JGSM’s Motion because it is premature as the  
22 arbitration proceedings are ongoing between the parties. Moreover, the Court,  
23 upon its own volition, can choose to dismiss this action in full as JGSM took the  
24 position that all claims in this case are subject to binding arbitration. JGSM

1 elected to enforce its rights through binding arbitration, and, therefore, there is no  
2 need for this Court to remain involved.

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**CERTIFICATE OF SERVICE**

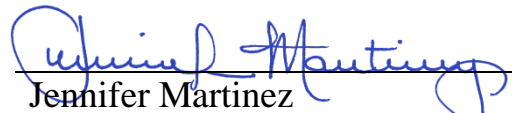
I certify that I am an employee of KAEMPFER CROWELL, and that on the date below, I caused the foregoing **RESPONSE TO JGSM's MOTION TO LIFT STAY [ECF No. 50]** to be served via CM/ECF and/or First Class Mail (where indicated) addressed to the following:

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